

## HOUSE BILL NO. 205

INTRODUCED BY C. HARRIS

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A DOLLARS FOR EDUCATION FUND; PROVIDING THAT THE FUND CONSISTS OF REVENUE FROM A 4 PERCENT SURCHARGE ON RENTAL VEHICLES, A 1 PERCENT REALTY TRANSFER TAX ON RECORDING THE TITLE OF NONCOMMERCIAL REAL PROPERTY THAT IS NOT A PRIMARY RESIDENCE, AN INCREASE FROM 4 PERCENT TO 5 PERCENT ON THE LODGING FACILITY USE TAX, AN INCREASE OF 1 CENT ON THE CIGARETTE TAX, AND AN INCREASE ON THE TAX ON TOBACCO PRODUCTS OTHER THAN CIGARETTES FROM 12.5 PERCENT TO 13.125 PERCENT; REALLOCATING THE DISTRIBUTION OF THE LODGING FACILITY USE TAX AND THE TAX ON CIGARETTES; ESTABLISHING A RENTAL VEHICLE SURCHARGE; PROVIDING FOR THE ADMINISTRATION OF THE SURCHARGE AND PROVIDING FOR PENALTIES AND INTEREST; REQUIRING THAT A RENTAL VEHICLE OWNER OR OPERATOR HAVE A PERMIT TO OPERATE; PROVIDING THAT THE RENTAL VEHICLE OWNER OR OPERATOR KEEPS 5 PERCENT OF THE SURCHARGE FOR ADMINISTERING THE COLLECTION OF THE SURCHARGE; ESTABLISHING A 1 PERCENT REALTY TRANSFER TAX ON THE RECORDING OF A TITLE TO NONCOMMERCIAL REAL PROPERTY THAT IS NOT A PRIMARY RESIDENCE; PROVIDING FOR THE ADMINISTRATION OF THE REALTY TRANSFER TAX AND PROVIDING FOR PENALTIES AND INTEREST; PROVIDING EXEMPTIONS FROM THE REALTY TRANSFER TAX FOR CERTAIN TRANSFERS SUCH AS INVOLUNTARY TRANSFERS OR TRANSFERS BY OPERATION OF LAW; PROVIDING THAT A COUNTY KEEPS 5 PERCENT OF THE REALTY TRANSFER TAX COLLECTIONS FOR THE ADMINISTRATION OF THE TAX; AMENDING SECTIONS 15-65-111, 15-65-121, 16-11-111, 16-11-119, 16-11-202, AND 16-11-206, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**NEW SECTION.** **Section 1. Dollars for education account.** (1) There is a dollars for education special revenue account in the state special revenue fund established in 17-2-102. The money deposited in the account must be used to establish a dollars for education fund.

(2) There must be deposited in the dollars for education account proceeds from the rental vehicle

1 surcharge as provided in [section 3], proceeds from the realty transfer tax as provided in [section 11], a  
2 portion of the proceeds of the lodging facility use tax as provided in 15-65-121, a portion of the proceeds  
3 of the cigarette sales tax as provided in 16-11-119, and a portion tax on tobacco products other than  
4 cigarettes as provided in 16-11-206.

5 (3) The money in the dollars for education fund may be appropriated only for K-12 public  
6 education and public postsecondary education.

7

8 **NEW SECTION. Section 2. Definitions.** As used in [sections 2 through 7], the following definitions  
9 apply:

10 (1) (a) "Gross receipts" means all receipts from sources within the state, whether in money or  
11 other consideration, received from engaging in the business of renting rental vehicles.

12 (b) The term does not include the amount received for motor fuel.

13 (2) "Rental vehicle" means a passenger vehicle that:

14 (a) is rented for a period of not more than 30 days;

15 (b) is rented without a driver;

16 (c) is designed to transport 15 or fewer passengers; and

17 (d) has a manufacturer's rated capacity of 1 ton or less.

18 (3) "Rental vehicle owner or operator" means a person who owns or leases rental vehicles and  
19 who rents or offers to rent the rental vehicles.

20

21 **NEW SECTION. Section 3. Rate of rental vehicle surcharge -- reimbursement -- exception --**  
22 **collection and reporting -- distribution.** (1) (a) Except as provided in subsection (1)(b), there is imposed  
23 a surcharge on rental vehicles. The surcharge is 4% of the rental base price, exclusive of insurance, as  
24 stated in the rental contract. The surcharge must be stated in the rental contract and collected in  
25 accordance with the terms of the contract.

26 (b) The surcharge imposed by this section does not apply to the rental base price for rental  
27 vehicles rented pursuant to a contract for insurance.

28 (2) The rental vehicle owner or operator shall report to the department, at the end of each calendar  
29 quarter, the gross receipts actually collected during that quarter attributable to the rental contracts,  
30 exclusive of gross receipts attributable to contracts for insurance. The report must be on a form provided

1 by the department. The report is due on or before the last day of the month following the end of the  
2 calendar quarter and must be accompanied by a payment in an amount equal to 95% of the surcharge  
3 required to be collected under subsection (1). The remaining 5% of the amount of the surcharge must be  
4 retained by the rental vehicle owner or operator as an administrative allowance for collection of the  
5 surcharge.

6 (3) The department shall credit the proceeds of the surcharge, less an allowance for overpayments  
7 and refunds, to the dollars for education fund established in [section 1].

8

9 NEW SECTION. **Section 4. Permit application -- place of business.** (1) Prior to engaging in the  
10 business of renting vehicles, a prospective rental vehicle owner or operator shall file with the department  
11 an application for a permit. If the prospective rental vehicle owner or operator has more than one location  
12 in which the owner or operator maintains an office or other place of business, an application may include  
13 multiple locations.

14 (2) Each rental vehicle owner or operator who is required to file a report under [sections 2 through  
15 7] is required to file an application for a permit.

16 (3) Each application for a permit must be on a form prescribed by the department and must set  
17 forth the name under which the applicant intends to transact business, the location of the applicant's place  
18 or places of business, and other information that the department may require. The application must be filed  
19 by the rental vehicle owner or operator if the owner or operator is a natural person, by a member or  
20 partner if the owner or operator is an association or partnership, or by a person authorized to sign the  
21 application if the owner or operator is a corporation.

22 (4) A rental vehicle owner or operator who fails to comply with this section is subject to a fine  
23 of not less than \$50 and not more than \$100.

24

25 NEW SECTION. **Section 5. Audits -- records.** (1) The department may audit the books and records  
26 of a rental vehicle owner or operator to ensure that the proper amount of the surcharge imposed by  
27 [section 3] has been collected. An audit may be done on the premises of the rental vehicle owner or  
28 operator or at any other convenient location.

29 (2) The department may request the rental vehicle owner or operator to provide the department  
30 with books, ledgers, registers, or other documents necessary to verify the correct amount of the

1 surcharge.

2 (3) The rental vehicle owner or operator shall maintain and have available for inspection by the  
3 department books, ledgers, registers, or other documents showing the collection of the rental vehicle  
4 surcharge for the preceding 5 years.

5 (4) Except in the case of a person who, with intent to evade the surcharge, purposely or  
6 knowingly files a false or fraudulent report violating the provisions of [sections 2 through 7], the amount  
7 of surcharge due under any report must be determined by the department within 5 years after the return  
8 is made. After 5 years, the department is barred from revising any report or recomputing the surcharge  
9 due, and a proceeding in court for the collection of the surcharge may not be instituted unless notice of  
10 any additional surcharge is provided within the 5-year period.

11 (5) An application for revision may be filed with the department by a rental vehicle owner or  
12 operator within 5 years from the original due date of the report.

13

14 NEW SECTION. **Section 6. Penalty for failure to file or pay.** (1) A rental vehicle owner or operator  
15 who fails to file the report as required by [section 3] must be assessed a penalty as provided in 15-1-216.  
16 The department may waive the penalty as provided in 15-1-206.

17 (2) A rental vehicle owner or operator who fails to make payment or fails to report and make  
18 payment as required by [section 3] must be assessed a penalty and interest as provided in 15-1-216. The  
19 department may waive any penalty pursuant to 15-1-206.

20 (3) (a) If a rental vehicle owner or operator fails to file the report required by [section 3] or if the  
21 department determines that the report understates the amount of surcharge due, the department may  
22 determine the amount of the surcharge due and assess that amount against the owner or operator. The  
23 provisions of 15-1-211 apply to any assessment by the department. The taxpayer may seek review of the  
24 assessment pursuant to 15-1-211.

25 (b) When a deficiency is determined and the surcharge becomes final, the department shall mail  
26 a notice and demand for payment to the rental vehicle owner or operator. The surcharge is due and  
27 payable at the expiration of 30 days after the notice and demand were mailed. Interest on any deficiency  
28 assessment must be computed as provided in 15-1-216.

29

30 NEW SECTION. **Section 7. Overpayment and underpayment.** (1) If the department determines

1 that the amount of surcharge, penalty, or interest paid for any year is more than the amount due, the  
2 amount of the overpayment must be credited against any surcharge, penalty, or interest then due from  
3 the rental vehicle owner or operator and the balance must be refunded to the owner or operator, to the  
4 owner's or operator's successor through reorganization, merger, or consolidation, or to the owner's or  
5 operator's shareholders upon dissolution.

6 (2) Except as provided in subsection (3), interest is allowed on overpayments at the same rate that  
7 is charged on unpaid taxes as provided in 15-1-216 from the due date of the return or from the date of  
8 overpayment, whichever is later, to the date that the department approves refunding or crediting of the  
9 overpayment.

10 (3) (a) Interest does not accrue during a period in which the processing of a claim for refund is  
11 delayed more than 30 days by reason of failure of the rental vehicle owner or operator to furnish  
12 information requested by the department for the purpose of verifying the amount of the overpayment.

13 (b) Interest is not allowed:

14 (i) if the overpayment is refunded within 6 months from the date the return is due or from the date  
15 the return is filed, whichever is later; or

16 (ii) if the amount of interest is less than \$1.

17 (c) Only a payment made incident to a bona fide and orderly discharge of actual surcharge liability  
18 or one reasonably assumed to be imposed by [sections 2 through 7] is considered an overpayment with  
19 respect to which interest is allowable.

20

21 NEW SECTION. **Section 8. Realty transfer tax.** (1) There is a tax on a person recording the  
22 transfer of title to noncommercial real property that is not used as a primary residence in an amount equal  
23 to 1% of the market value of the property. The person has the burden of claiming and demonstrating the  
24 right to any exemption to the tax provided in [section 9] prior to recording the transfer.

25 (2) For the purposes of this section, the following definitions apply:

26 (a) "Noncommercial" means real property that is not used or owned by a business, trade, or  
27 corporation and that is not used for the production of income.

28 (b) "Primary residence" means a single-family residence, including a single-family unit in a multiunit  
29 building, intended to be occupied by the owner or owners as their primary abode for at least 10 months  
30 a year.

1

2        **NEW SECTION.** **Section 9. Exempt transactions.** The tax imposed by [sections 8 through 11] does  
3 not apply to:

4            (1) an instrument recorded prior to [the effective date of this act];

5            (2) a transfer solely to provide or release security for a debt or obligation;

6            (3) the United States, this state, or any instrumentality, agency, or subdivision of the United  
7 States or this state;

8            (4) an instrument that, without added consideration, confirms, corrects, modifies, or supplements  
9 a previously recorded instrument;

10           (5) a transfer pursuant to a court decree of partition;

11           (6) a transfer of decedents' estates;

12           (7) a transfer of a gift;

13           (8) a transfer between husband and wife or parent and child with only nominal actual  
14 consideration for the transfer;

15           (9) an instrument the effect of which is to transfer the property to the same party or parties;

16           (10) a sale for delinquent taxes or assessments, a sheriff's sale, a bankruptcy action, or a mortgage  
17 foreclosure; or

18           (11) a transfer made in contemplation of death.

19

20        **NEW SECTION.** **Section 10. Collection of tax -- appeals -- interest and penalty -- statute of**  
21 **limitations -- lien on transferred property.** (1) Before a deed or instrument evidencing a transfer of title  
22 subject to the tax imposed by [section 8] may be recorded, the treasurer of the county where the real  
23 property or any portion of the real property is located shall calculate and collect the amount of tax due.

24           (2) If the taxpayer contests the tax assessment or the denial of an exemption from the tax by the  
25 county treasurer, the taxpayer may appeal the tax assessment or the denial of the exemption to the  
26 department. The appeal is governed by the provisions of 15-1-211.

27           (3) If the county treasurer determines that the amount of tax due is greater than the amount  
28 collected, the county treasurer shall mail to the taxpayer a notice, pursuant to 15-1-211, of the additional  
29 tax proposed to be assessed. A penalty of 10% of the unpaid tax must be assessed. In addition, any  
30 deficiency assessment bears interest until paid at the rate of 1% a month or fraction of a month, computed

1 from the date on which the transfer was recorded.

2 (4) The taxpayer may seek a review of the determination by the department pursuant to 15-1-211.

3 (5) The deficiency may not be assessed unless notice of the additional tax proposed to be  
4 assessed is mailed within 5 years from the date on which the transfer was recorded. If the certificate filed  
5 is fraudulent, the 5-year period does not begin until discovery of the fraud.

6 (6) The treasurer may collect any additional tax, penalty, and interest pursuant to 15-16-102.

7 (7) The additional tax, penalty, and interest are a lien against the real property that was transferred  
8 and may be collected and enforced in the manner as other tax liens on real property are enforced. The use  
9 of one method of collection does not preclude the use of an alternative method of collection.

10

11 NEW SECTION. **Section 11. Distribution of tax proceeds.** Pursuant to 15-1-504, the county  
12 treasurer shall forward to the state treasurer 95% of the amount of the tax collected under [section 8] in  
13 the preceding month for deposit in the account provided for in [section 1]. The remaining portion of the  
14 tax collected under [section 8] in the preceding month must be kept by the county treasurer for the  
15 county's tax collection and administrative expense.

16

17 **Section 12.** Section 15-65-111, MCA, is amended to read:

18 **"15-65-111. Tax rate.** (1) There is imposed on the user of a facility a tax at a rate equal to ~~4%~~  
19 5% of the accommodation charge collected by the facility.

20 (2) Accommodation charges do not include charges for rooms used for purposes other than  
21 lodging."

22

23 **Section 13.** Section 15-65-121, MCA, is amended to read:

24 **"15-65-121. (Temporary) Distribution of tax proceeds.** (1) The proceeds of the tax imposed by  
25 15-65-111 must, in accordance with the provisions of 15-1-501, be deposited in an account in the state  
26 special revenue fund to the credit of the department. The department may spend from that account in  
27 accordance with an expenditure appropriation by the legislature based on an estimate of the costs of  
28 collecting and disbursing the proceeds of the tax. Before allocating the balance of the tax proceeds in  
29 accordance with the provisions of 15-1-501 and as provided in subsections (1)(a) through ~~(1)(e)~~ (1)(f) of  
30 this section, the department shall determine the expenditures by state agencies for in-state lodging for

1 each reporting period and deduct ~~4%~~ 5% of that amount from the tax proceeds received each reporting  
2 period. The amount deducted must be deposited in the fund or funds from which in-state lodging  
3 expenditures were paid by state agencies. The amount of \$400,000 each year must be deposited in the  
4 Montana heritage preservation and development account provided for in 22-3-1004. ~~On July 1, 1997, the~~  
5 ~~amount of \$45,000 is transferred to the department of commerce for purposes of a grant to the Fort Peck~~  
6 ~~interpretive center.~~ The balance of the tax proceeds received each reporting period and not deducted  
7 pursuant to the expenditure appropriation or deposited in the fund or funds from which in-state lodging  
8 expenditures were paid by state agencies or in the Montana heritage preservation and development  
9 account is statutorily appropriated, as provided in 17-7-502, and must be transferred ~~to an account in the~~  
10 ~~state special revenue fund to the credit of the department of commerce for tourism promotion and~~  
11 ~~promotion of the state as a location for the production of motion pictures and television commercials, to~~  
12 ~~the Montana historical society, to the university system, and to the department of fish, wildlife, and parks,~~  
13 as follows:

14 (a) ~~1%~~ 0.8% to the Montana historical society to be used for the installation or maintenance of  
15 roadside historical signs and historic sites;

16 (b) ~~2.5%~~ 2% to the university system for the establishment and maintenance of a Montana travel  
17 research program;

18 (c) ~~6.5%~~ 5.2% to the department of fish, wildlife, and parks for the maintenance of facilities in  
19 state parks that have both resident and nonresident use;

20 (d) ~~67.5%~~ 54% to be used directly by the department of commerce for tourism promotion and  
21 promotion of the state as a location for the production of motion pictures and television commercials; and

22 (e) 20% to the dollars for education fund established in [section 1]; and

23 ~~(e)(f)~~ (i) except as provided in subsection ~~(1)(e)(ii)~~ (1)(f)(ii), ~~22.5%~~ 18% to be distributed by the  
24 department to regional nonprofit tourism corporations in the ratio of the proceeds collected in each tourism  
25 region to the total proceeds collected statewide; and

26 (ii) if ~~22.5%~~ 18% of the proceeds collected annually within the limits of a city or consolidated  
27 city-county exceeds \$35,000, 50% of the amount available for distribution to the regional nonprofit  
28 tourism corporation in the region where the city or consolidated city-county is located, to be distributed  
29 to the nonprofit convention and visitors bureau in that city or consolidated city-county.

30 (2) If a city or consolidated city-county qualifies under this section for funds but fails to either



1 recognize a nonprofit convention and visitors bureau or submit and gain approval for an annual marketing  
2 plan as required in 15-65-122, then those funds must be allocated to the regional nonprofit tourism  
3 corporation in the region in which the city or consolidated city-county is located.

4 (3) If a regional nonprofit tourism corporation fails to submit and gain approval for an annual  
5 marketing plan as required in 15-65-122, then those funds otherwise allocated to the regional nonprofit  
6 tourism corporation may be used by the department of commerce for tourism promotion and promotion  
7 of the state as a location for the production of motion pictures and television commercials. (Terminates  
8 July 1, 2001--sec. 23(3), Ch. 469, L. 1997.)

9 **15-65-121. (Effective July 1, 2001) Distribution of tax proceeds.** (1) The proceeds of the tax  
10 imposed by 15-65-111 must, in accordance with the provisions of 15-1-501, be deposited in an account  
11 in the state special revenue fund to the credit of the department. The department may spend from that  
12 account in accordance with an expenditure appropriation by the legislature based on an estimate of the  
13 costs of collecting and disbursing the proceeds of the tax. Before allocating the balance of the tax  
14 proceeds in accordance with the provisions of 15-1-501 and as provided in subsections (1)(a) through  
15 ~~(1)(e)~~ (1)(f) of this section, the department shall determine the expenditures by state agencies for in-state  
16 lodging for each reporting period and deduct ~~4%~~ 5% of that amount from the tax proceeds received each  
17 reporting period. The amount deducted must be deposited in the fund or funds from which in-state lodging  
18 expenditures were paid by state agencies. The balance of the tax proceeds received each reporting period  
19 and not deducted pursuant to the expenditure appropriation or deposited in the fund or funds from which  
20 in-state lodging expenditures were paid by state agencies is statutorily appropriated, as provided in  
21 17-7-502, and must be transferred ~~to an account in the state special revenue fund to the credit of the~~  
22 ~~department of commerce for tourism promotion and promotion of the state as a location for the production~~  
23 ~~of motion pictures and television commercials, to the Montana historical society, to the university system,~~  
24 ~~and to the department of fish, wildlife, and parks,~~ as follows:

25 (a) ~~1%~~ 0.8% to the Montana historical society to be used for the installation or maintenance of  
26 roadside historical signs and historic sites;

27 (b) ~~2.5%~~ 2% to the university system for the establishment and maintenance of a Montana travel  
28 research program;

29 (c) ~~6.5%~~ 5.2% to the department of fish, wildlife, and parks for the maintenance of facilities in  
30 state parks that have both resident and nonresident use;

(d) ~~67.5%~~ 54% to be used directly by the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials; and

(e) 20% to the dollars for education fund established in [section 1]; and

~~(e)(f)~~ (i) except as provided in subsection ~~(1)(e)(ii)~~ (1)(f)(ii), ~~22.5%~~ 18% to be distributed by the department to regional nonprofit tourism corporations in the ratio of the proceeds collected in each tourism region to the total proceeds collected statewide; and

(ii) if ~~22.5%~~ 18% of the proceeds collected annually within the limits of a city or consolidated city-county exceeds \$35,000, 50% of the amount available for distribution to the regional nonprofit tourism corporation in the region where the city or consolidated city-county is located, to be distributed to the nonprofit convention and visitors bureau in that city or consolidated city-county.

(2) If a city or consolidated city-county qualifies under this section for funds but fails to either recognize a nonprofit convention and visitors bureau or submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds must be allocated to the regional nonprofit tourism corporation in the region in which the city or consolidated city-county is located.

(3) If a regional nonprofit tourism corporation fails to submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds otherwise allocated to the regional nonprofit tourism corporation may be used by the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials."

**Section 14.** Section 16-11-111, MCA, is amended to read:

**"16-11-111. Cigarette sales tax -- exemption for sale to tribal member.** (1) A tax on the purchase of cigarettes for consumption, use, or any purpose other than resale in the regular course of business is imposed and must be precollected by the wholesaler and paid to the state of Montana. The tax is ~~18~~ 19 cents on each package containing 20 cigarettes and, when packages contain more or less than 20 cigarettes, a tax on each cigarette equal to 1/20th the tax on a package containing 20 cigarettes.

(2) The tax imposed in subsection (1) does not apply to quota cigarettes.

(3) Subject to the refund or credit provided in subsection (4), the tax must be precollected on all cigarettes entering a Montana Indian reservation.

(4) Pursuant to the procedure provided in subsection (5), a wholesaler making a sale of cigarettes to a retailer within the boundaries of a Montana Indian reservation may apply to the department for a

1 refund or credit for taxes precollected on cigarettes sold by the retailer to a member of the federally  
2 recognized Indian tribe or tribes on whose reservation the sale is made. A wholesaler who does not file  
3 a claim within 1 year of the shipment date forfeits the refund or credit.

4 (5) The distribution of tax-free cigarettes to a tribal member must be implemented through a  
5 system of preapproved wholesaler shipments. A licensed Montana wholesaler shall contact the department  
6 for approval prior to the shipment of the untaxed cigarettes. The department may authorize sales based  
7 on whether the quota, as established in a cooperative agreement between the department and an Indian  
8 tribe or as set out in this chapter, has been met. If authorized as a tax-exempt sale, the wholesaler, upon  
9 providing proof of order and delivery to a retailer within the boundaries of a Montana Indian reservation  
10 selling cigarettes to members of a federally recognized tribe or tribes of that reservation, must be given  
11 a credit or refund. Once the quota has been filled, the department shall immediately notify all affected  
12 wholesalers that further sales on that reservation must be taxed and that a claim for a refund or credit will  
13 not be honored for the remainder of the quota period. Quota allocations are not transferable between quota  
14 periods or between reservations.

15 (6) The total amount of refunds or credits allowed by the department to all wholesalers claiming  
16 the refund or credit under subsection (4) for any month may not exceed an amount that is equal to the  
17 tax due on the quota allocation. The department shall determine the amount of refunds or credits for each  
18 Indian reservation at the beginning of each fiscal year, using the most recent census data available from  
19 the bureau of Indian affairs or as provided in a cooperative agreement with the tribe or tribes of the Indian  
20 reservation."

21  
22 **Section 15.** Section 16-11-119, MCA, is amended to read:

23 **"16-11-119. Disposition of taxes.** Cigarette taxes collected under the provisions of 16-11-111  
24 must be allocated as follows:

25 (1) The amount of ~~11.11%~~ 11% of the cigarette tax collected on each package of cigarettes must  
26 be deposited in the state special revenue fund to the credit of the department of public health and human  
27 services for the operation and maintenance of state veterans' nursing homes.

28 (2) The amount of ~~73.04%~~ 69.5% must, in accordance with the provisions of 15-1-501, be  
29 deposited in the state general fund.

30 (3) The amount of ~~15.85%~~ 14.5% must, in accordance with the provisions of 15-1-501, be

1 deposited in the long-range building program account provided for in 17-7-205.

2 (4) The amount of 5% must, in accordance with the provisions of 15-1-501, be deposited in the  
3 dollars for education account established in [section 1]."

4

5 **Section 16.** Section 16-11-202, MCA, is amended to read:

6 **"16-11-202. Tax on sale of tobacco other than cigarettes -- imposed on retail consumer -- rate**  
7 **of tax.** (1) All taxes paid pursuant to the provisions of this section are considered to be direct taxes on the  
8 retail consumer, precollected for the purpose of convenience and facility only. When the tax is paid by any  
9 other person, the payment is considered as an advance payment and must be added to the price of  
10 tobacco products and recovered from the ultimate consumer or user. Any person selling tobacco products  
11 at retail shall state or separately display in the premises where the products are sold a notice of the tax  
12 included in the selling price and charged or payable pursuant to this section. The provisions of this section  
13 do not affect the method of collection of the tax as provided in this part.

14 (2) There must be collected and paid to the state of Montana a tax of ~~12 1/2%~~ 13.125% of the  
15 wholesale price of all tobacco products to the wholesaler. Tobacco products shipped from Montana and  
16 destined for retail sale and consumption outside the state are not subject to this tax."

17

18 **Section 17.** Section 16-11-206, MCA, is amended to read:

19 **"16-11-206. Wholesaler's discount -- disposition of taxes.** (1) The taxes specified in this part that  
20 are paid by the wholesaler must be paid to the department in full less a 5% defrayment for the  
21 wholesaler's collection and administrative expense, ~~and must,~~ The proceeds must, in accordance with the  
22 provisions of 15-1-501, be deposited by the department as follows:

23 (a) 95% in the state general fund; and

24 (b) 5% in the dollars for education account established in [section 1].

25 (2) Refunds of the tax paid must be made as provided in 15-1-503 in cases in which the tobacco  
26 products purchased become unsalable."

27

28 NEW SECTION. **Section 18. Tax applicable to cigarette and tobacco product inventory.** All  
29 wholesalers, distributors, and retailers shall pay the difference between the tax rate in effect on December  
30 31, 2001, and the new tax rate in effect on January 1, 2002, on all cigarette and tobacco product

1 inventory subject to tax under 61-11-111 and 61-11-202 that is held by the wholesaler, distributor, or  
2 retailer on January 1, 2002.

3

4 NEW SECTION. **Section 19. Codification instruction.** (1) [Section 1] is intended to be codified  
5 as an integral part of Title 20, chapter 1, and the provisions of Title 20, chapter 1, apply to [section 1].

6 (2) [Sections 2 through 11] are intended to be codified as an integral part of Title 15, and the  
7 provisions of Title 15 apply to [sections 2 through 11].

8

9 NEW SECTION. **Section 20. Effective date -- rulemaking.** (1) [This act] is effective January 1,  
10 2002.

11 (2) The department of revenue may proceed to adopt rules to implement [sections 2 through 11]  
12 prior to January 1, 2002, but the rules may not become effective prior to January 1, 2002.

13

14 NEW SECTION. **Section 21. Applicability.** [This act] applies to:

15 (1) rental vehicle owners or operators that are in business and rental vehicles that are rented after  
16 December 31, 2001;

17 (2) transfers of title to real property recorded after December 31, 2001; and

18 (3) lodging facilities rented after December 31, 2001.

19

- END -